

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: SEPTEMBER 11, 2009

SUBJECT: PROPOSED ABANDONMENT OF A 6.23 MILE SECTION OF BNSF RAILWAY COMPANY'S RAIL LINE, CASE NO. BNR-R-09-01

On August 10, 2009, the Commission received BNSF Railway Company's (BNSF) Petition for Exemption filed with the Surface Transportation Board (STB) which requests exemption from federal regulation and authority to abandon a 6.23 mile section of its rail line in Kootenai County, Idaho. *Petition for Exemption*, Docket NO. AB-6 (SUB-NO. 468X) at 3. BNSF proposes to abandon its rail line located between Milepost 6.10 near Post Falls and Milepost 12.33 at Coeur d'Alene, Kootenai County, Idaho (the "Line"). *Id.*

On August 28, 2009, the STB issued a notice instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b) and notes that a final decision will be issued by November 27, 2009.

THE COMMISSION'S ROLE IN ABANDONMENTS

The STB is the federal entity with the authority to approve or deny railroad abandonments. However, *Idaho Code* § 62-424 provides that the Commission "shall schedule a public hearing on the proposed abandonment." The purpose of the state abandonment hearing is for the Commission to determine whether the abandonment would: (1) adversely affect the area being served; (2) impair the access of Idaho shippers to vital goods and markets; and (3) whether the rail line has the potential for profitability. If the Commission finds that the abandonment would adversely affect the area being served and the line has the potential for profitability, then the Commission may represent the State of Idaho in the STB abandonment proceeding.

Unlike the traditional abandonment process, the exemption process allows a railroad to abandon a rail line in as few as 30 days. Under the exemption process, there is no requirement to file a notice of intent to abandon or an annual system diagram map showing rail lines in jeopardy. To be eligible to file a petition for exemption, a railroad must certify that no rail traffic has moved on the line for the past two years and there are no outstanding complaints about the lack of rail service on the line. Under the exemption procedure, the STB will publish a notice in the Federal Register within 20 days after the petition for exemption is filed. Thirty (30) days after the notice is published in the Federal Register, the railroad is permitted to abandon the rail line unless the STB stays the abandonment.

FACTUAL BACKGROUND

BNSF states in its Petition seeking an abandonment exemption that there “are no shippers remaining on the Line” and that “there has been no overhead traffic on the Line for many years prior to that.” *Petition* at 4. BNSF states further that it has received a “firm offer to purchase the Line between Milepost 12.33 and Milepost 8.66” so that it may be developed in accordance with the Coeur d’Alene Education Corridor Master Plan. *Id.* The remaining portion of the Line, between Milepost 8.66 and Milepost 6.10, “will be converted to industry track and used for storage of surplus rail cars.” *Id.* The City of Coeur d’Alene has also reached a tentative agreement with the federal Bureau of Land Management (BLM) to exchange the federal right-of-way located on the Line “for land in the general area that is more suitable to BLM’s purposes.” *Id.*

COMMISSION DECISION

Does the Commission wish to issue a Notice of Proposed Abandonment and Notice of Hearing?



Neil Price
Deputy Attorney General

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